

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHAD PELISHEK,

Plaintiff

v.

Case No. 2:23-CV-1048-WED

CITY OF SHEBOYGAN, et al.,

Defendants.

**PLAINTIFF CHAD PELISHEK'S RESPONSE TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Plaintiff Chad Pelishek, by and through his undersigned counsel, requests this Court deny as moot the Defendants' Motion to Dismiss (ECF Nos. 10 – 12) because Plaintiff has filed an Amended Complaint (ECF No. 13) under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure.

On October 9, 2023, the Defendants filed a sixty-eight-page brief in support of their motion to dismiss (ECF No. 11), without first receiving leave of Court and without attaching their oversized brief to their motion for leave (ECF No. 9). *See* E. D. Wis. Civil L. Rs. 7(i) & (f) (“the principal memorandum in support of, or in opposition to, any motion must not exceed 30 pages”); Committee Comment Civil L. R. 7(g) and (i), (“[t]he rule expressly allows the Court to expand the page count if needed, but it does not allow the filing of a memorandum longer than permitted by Civil L. R. 7 unless the Court grants leave before the memorandum is filed”).

Despite this, Plaintiff filed his Amended Complaint on October 15, under Fed. R. Civ. P. 15(a)(1)(B), within twenty-one days of the Defendants' motion to dismiss (ECF No. 10). Therefore, Plaintiff's Amended Complaint supersedes his original pleading, and the Defendants must file an

answer or responsive pleading to Plaintiff's Amended Complaint (ECF No. 13). See *Wellness Community Nat. v. Wellness House*, 70 F.3d 46, 49 (7th Cir. 1995) (internal citations omitted); see also *Fry v. UAL Corp.*, 1995 WL 475616 (N.D. Ill. 1995) ("[o]nce an amended pleading is interposed, the original pleading no longer performs any function in the case"). Accordingly, Defendants' motion to dismiss should be denied as moot.

Dated: October 30, 2023.

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